

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for August 30, 2006 PLANNING COMMISSION MEETING

**PROJECT #:** Change of Zone #06055

**PROPOSAL:** From H-2 Highway Business to B-3 Commercial

**LOCATION:** 5000 O Street

**LAND AREA:** Approximately 7.08 acres.

**EXISTING ZONING:** H-2 Highway Business

**PROPOSED ZONING:** B-3 Commercial

**CONCLUSION:** A change to B-3 for this site is consistent with the intent of the district which is to provide for local commercial uses in a redeveloping neighborhood generally located in established retail centers of those neighborhoods. The H-2 limits retail to 20,000 square feet of floor area. To conform to the redevelopment agreement that includes a retail use greater than 20,000 square feet in area, the zoning must be changed. B-3 is consistent with the recently approved redevelopment plan for this area and the rezoning recently approved across O Street to the south.

**RECOMMENDATION:**

Approval

### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** See attached legal description.

**EXISTING LAND USE:** Vacant

### **SURROUNDING LAND USE AND ZONING:**

North:	Commercial	H-2
South:	Commercial	B-3, H-2
East:	Commercial	H-2
West:	Commercial	H-2

**HISTORY: June 26, 2006** - The redevelopment agreement between the City and Hy-Vee was approved by the City Council.

**January 26, 2005** - CPC#04010 was approved finding that the 48<sup>th</sup> & O Streets Redevelopment Plan was in conformance with the Comprehensive Plan.

**August 23, 2004** - The City Council adopted the findings of a Blight and Substandard Determination Study and declared the 48<sup>th</sup> & O Streets area “substandard and blighted.”

**1979** - The zoning was changed from H-1 to H-2 with the 1979 Zoning Update.

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

#### **Page F17** - Guiding Principals for the Urban Environment

Preservation and renewal of historic buildings, districts, and landscapes is encouraged. Development and redevelopment should respect historical patterns, precedents, and boundaries in towns, cities and existing neighborhoods.

#### **Page F25** - The Land Use Map designates commercial land uses for this site.

#### **Page F49** - Guiding Principles for Existing Commercial Centers

Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented.

Maintain and encourage retail establishments and businesses that are convenient to, and serve, neighborhood residents, yet are compatible with, but not intrusive upon residential neighborhoods.

Expansion of existing commercial and industrial uses should not encroach on existing neighborhoods and must be screened from residential areas.

### **ANALYSIS:**

1. The Comprehensive Plan designates this site for commercial uses, and the recently approved redevelopment plan calls for “commercial and mixed use activities” on this site.
2. The City has entered into a redevelopment agreement for this site which allows a 78,000 square foot grocery store. Section 203 of that agreement states that “Prior to closing, the Parties shall cause 5000 O Street to be rezoned to B-3 Commercial Zoning District, replatted, and obtain the necessary special permits to accommodate the land uses planned for 5000 O Street in this agreement.”

3. Lincoln Municipal Code (LMC) Section 27.41.020(aa) for the H-2 district states “Stores or shops for the sale of goods at retail, not otherwise permitted in this chapter, of no more than 20,000 square feet of floor area.” There is no provision to adjust this requirement, as in the H-3 district which allows retail uses to exceed 20,000 square feet by special permit. At 78,000 square feet in area, the grocery store is not allowed in the H-2 district.
4. The B-3 and H-2 are similar zoning districts, with the H-2 generally characterized as the more intensive of the two. The B-3 allows a range of uses more oriented towards those serving surrounding neighborhoods, and the H-2 is more oriented towards those serving the larger community and generally located on an arterial street or highway. The notable exceptions to the similarity in allowed uses are as follows:

**Uses allowed in H-2 but not in B-3**

1. Wholesale Bakeries
2. Bottling Works
3. Sand, soil and gravel extraction
4. Mini-warehousing
5. Outdoor lighting for rec. facility
6. Outdoor theater
7. Plumbing contractor
8. Truck wash facility
9. Vehicle storage for sale or resale
10. Truck sales

**Uses allowed in B-3 but not in H-2**

1. Dwellings above 1<sup>st</sup> story
2. Dry cleaner
3. Laundrette
4. Nonprofit institutions
5. Photocopying
6. Indoor sales showrooms

5. For comparison, the setbacks and required parking in the B-3 and H-2 Per Lincoln Municipal Code (LMC) are summarized as follows:

	<b>B-3</b>	<b>H-2</b>
<b>Front</b>	0', or same as abutting residential	25'
<b>Side</b>	0', or 5'* if abutting residential district	5', or 20'* when abutting residential
<b>Rear</b>	0', or 30'* if abutting residential district	Smaller of 30'* or 20% of lot depth
<b>Off-street Parking</b>	One space per 600 square feet of floor area (1/600).	One space per 200 square feet of floor area (1/200)

\*When a side or rear yard abuts a residential district, it shall be screened in conformance with the landscape design standards.

6. The redevelopment agreement includes access and site plan controls plus Exhibit G - Declaration of Use Restrictions. Certain uses are prohibited on the site that may otherwise be allowed in the zoning district, and a copy of the exhibit is attached.

Prepared by:

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Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
August 16, 2006

**OWNER:** Abram LLC  
709 Cambrian Court  
Lincoln, NE 68510

**APPLICANT/  
CONTACT:** Wynn Hjermstad  
Urban Development Department  
808 P Street  
Lincoln, NE 68508  
402.441.8211



2005 aerial

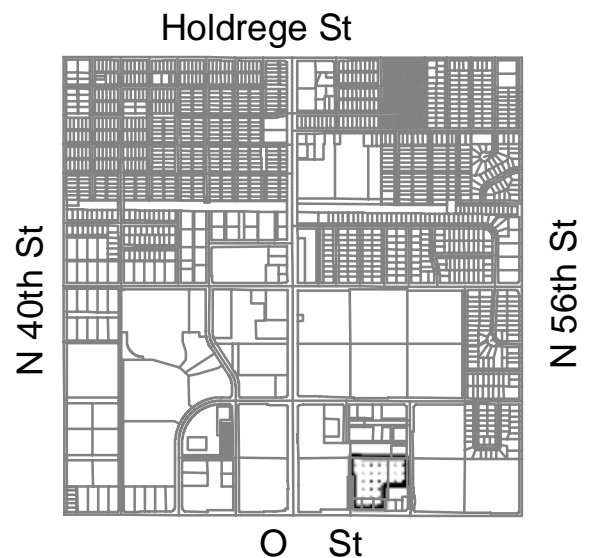
## Change of Zone #06055 N 52nd St & O St Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 20 T10N R07E



Zoning Jurisdiction Lines  
City Limit Jurisdiction





# MEMORANDUM

**To:** Marvin Krout, Planning Director  
**From:** Wynn Hjermstad, Community Development Manager  
**Date:** August 8, 2006  
**Subject:** Proposed re-zoning at 48<sup>th</sup> and O Street  
**cc:** Marc Wullschleger, Urban Development Director  
Bradd Schmeichel, CD Program Specialist  
Kent Seacrest, Attorney

I submitted a request to you last week for a change of zone for the north side of 50<sup>th</sup> and O Streets. This request is consistent with the Redevelopment Agreement approved by City Council for the redevelopment at 50<sup>th</sup> and O which will be a new Hy Vee store.

Prior to approval of the Redevelopment Agreement and the subsequent rezoning request, Hy Vee representatives and Urban Development staff met with Planning staff to determine the appropriate zoning for this use. The following conclusions resulted from that meeting:

The proposed zoning change is based on the following items:

1) 5000 "O" Street is currently zoned H-2 Highway Business District. H-2 zoning only allows "stores or shops for the sale of goods at retail, not otherwise permitted in this chapter, of no more than 20,000 square feet of area." The proposed Hy-Vee store will be roughly 78,000 square feet. The H-2 zoning does not have a special permit provision to allow a retail store greater than 20,000 square feet. Accordingly, Hy-Vee's proposed store would not be permitted under any circumstances in the H-2 zone. B-3 zoning does not have a retail store size limitation.

2) The preamble for B-3 reads: "This is a district providing for local commercial uses in a redeveloping neighborhood generally located in established retail centers of those neighborhoods. The uses permitted generally are those for neighborhood uses, plus additional limited manufacturing uses that reflect the character of the commercial area". The proposed redevelopment plan and redevelopment agreement are implementing new land uses in a redeveloping neighborhood. The proposed grocery store includes many services and uses that are definitely neighborhood oriented. Hy-Vee's proposed uses meet the preamble of the B-3 zone.



Memorandum to Marvin Krout  
August 8, 2006  
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3) The South "O" Street redevelopment project was recently rezoned to the same B-3 zone. Rezoning the north side to B-3 would insure a consistent land use, height, area, and setback pattern on both the north and south sides of "O" Street.

4) While B-3 does not require a use permit or formal site plan review, the design and site review controls have been incorporated into the executed Redevelopment Agreement between the City and Hy-Vee. Hy-Vee has to submit its proposed design and site plan to the City for review and approval prior to construction. Similarly, the City's "O" Street widening project has permitted the City to have controlled access to the property and the surrounding area.

5) The Comprehensive Plan Future Land Use Map shows the property as "Commercial". The proposed B-3 rezoning would be in conformance with the Comprehensive plan.

For these reasons, Urban Development is requesting the rezoning to B-3. Please include this correspondence with the rezoning request form and route as appropriate. Please feel free to contact Bradd Schmeichel at [bschmeichel@lincoln.ne.gov](mailto:bschmeichel@lincoln.ne.gov) or me at [whjermstad@lincoln.ne.gov](mailto:whjermstad@lincoln.ne.gov) or either of us at 441-7606 if you have questions or need additional information.

Thank you.



# LEGAL DESCRIPTION

## Exhibit A

### 1. PARCEL 1:

Part of Lots E and F and part of Lot G, Burleighs Subdivision, Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at Southeast corner remaining portion said Lot E; thence North 00 Degrees 23 Minutes West a distance of 624.00 feet along East line said Lot 3 and Lot # extended Northerly to a point on the North line remaining part Lot G; thence Westerly along said North line North 90 Degrees 00 Minutes West a distance of 264.64 feet to the Northwest corner said remaining part Lot G; thence Southerly along West line said Lot G South 00 Degrees 23 Minutes East, a distance of 315.35 feet to a point on the North line North 50th Street; thence North 90 Degrees 00 Minutes East, a distance of 30.0 feet along North line said 50th Street to the East line said 50th Street; thence South 00 Degrees 23 Minutes East, a distance of 297.27 feet along said East line to the point of curvature of a curve to the left having a central angle of 59 Degrees 50 Minutes; thence Southeasterly along arc said curve, 24.02 feet to the point of tangency said curve, said point of tangency being 39.0 feet North of centerline of "O" Street, said centerline being also South line said Section 20; thence Easterly parallel to and 39.0 feet North from said centerline, North 90 Degrees 00 Minutes East a distance of 214.87 feet to point of beginning.

### 3. PARCEL 3:

Part of Lot D and part of Lot G, Burleighs Subdivision, Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the Southeast corner remaining part Lot D; thence Northerly along east line said Lot D and Lot D extended, North 00 Degrees 23 Minutes West, a distance of 308.65 feet; thence North 90 Degrees 00 Minutes West, a distance of 132.32 feet; thence Southerly along West line Lot D extended Northerly and Lot D, South 00 Degrees 23 Minutes East, a distance of 308.65 feet to a point 39.0 feet North of centerline "O" Street; thence Easterly parallel to and 39.0 feet North of centerline "O" Street, 132.32 feet to point of beginning.

### 4. PARCEL 4:

Part of Lots G and H, Burleighs Subdivision, Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the Northeast corner remaining part Lot H; thence Westerly along North line said Lots H and G, North 90 Degrees 00 Minutes West, a distance of 398.36 feet; thence Southerly South 00 Degrees 23 Minutes East, a distance of 315.35 feet; thence North 90 Degrees 00 Minutes East 132.32 feet; thence South 00 Degrees 23 Minutes East, a distance of 14.04 feet; thence North 90 Degrees 00 Minutes East, a distance of 266.00 feet to a point on the East line of said Lot H; thence Northerly along said East line North 00 Degrees 23 Minutes West, a distance of 329.39 feet to the point of beginning.

less any portions of North 52<sup>nd</sup> or O Streets rights-of-way.

## **EXHIBIT "G"**

### **DECLARATION OF USE RESTRICTIONS**

THIS DECLARATION OF USE RESTRICTIONS ("Restrictions") is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by HY-VEE, INC., an Iowa corporation ("Declarant").

#### **WITNESSETH:**

WHEREAS, Declarant is the owner of the real property legally described on Exhibit "A", which is attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, Declarant desires to subject the Property to the covenants and restrictions hereinafter set forth; and

NOW, THEREFORE, Declarant declares that the Property, and any additions thereto that may hereafter be made, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants and restrictions hereinafter set forth.

#### **ARTICLE I**

##### **GENERAL PROVISIONS**

1.1 Establishment of Restrictions. It is intended that each of the restrictions set forth in this Declaration shall run with the land and shall bind every person having any fee or other interest in the Property and shall inure to the benefit of the City.

1.2 Prohibited Uses. Unless otherwise approved in writing by the City of Lincoln in advance, no portion of the Property shall be used, directly or indirectly, for the operation of:

1. any outdoor off-premise advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;
2. a gas station or convenience store with or without gasoline pumps;
3. any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises) or any such business that has an

unreasonable pattern of unlawful disturbances or liquor law violations; provided that, this limitation shall not apply to that portion of the Private Improvements that contains a self-contained area (with its own exterior door opening) that is used for the retail sale of alcoholic beverages so long as said self-contained area of the Private Improvements also has an interior opening between the self-contained area and the balance of the building;

4. any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations;
5. any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;
6. any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility;
7. any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;
8. any business whose predominant operation is warehousing or storage of goods, materials or merchandise; or
9. any business involving a residential use, sale or display of weapons, self service laundry, industrial manufacturing, off-site outdoor advertising on the premises, cell tower, radio telecommunication or

other communication tower, illegal activities, or sale of any illegal goods or products.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

**HY-VEE, INC., an Iowa corporation**

By \_\_\_\_\_  
Richard N. Jurgens, President

By \_\_\_\_\_  
Stephen Meyer, Secretary

STATE OF IOWA     )  
                              ) ss.  
POLK COUNTY        )

On this \_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Richard N. Jurgens and Stephen Meyer, to me personally known, who being by me duly sworn did say that they are the President and Secretary, respectively, of Hy-Vee, Inc.; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Richard N. Jurgens and Stephen Meyer as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

(Seal)

\_\_\_\_\_  
Notary Public in and for the State of Iowa